

**Response to Comments Received at the  
18 March 2005 Regional Board  
Cache Creek Mercury Workshop**

The following is a summary of verbal comments received at the 18 March 2005 Regional Board Workshop for Agenda Item #21, Amendments to the Basin Plan for the Control of Mercury in Cache Creek, Bear Creek, Sulphur Creek, and Harley Gulch – *Workshop to Receive Comments*. Included is the speaker's name and affiliation, a summary of their comments, followed by staff responses.

**Speaker**        Petrea Marchand, Yolo County Planning and Public Works Department  
**Comment Summary**

Yolo County is interested in reducing the accumulation of methylmercury in fish tissue. The proposed Basin Plan amendments for the Mercury TMDL may have negative impacts on Yolo County's involvement with projects such as native plant re-vegetation, erosion control, bank stabilization, wetlands restoration, invasive species removal, campground improvements, bridge and road maintenance, and overseeing the gravel mining industry.

Yolo County is concerned about the local expenses associated with monitoring for water and sediment. Work that involved disrupting sediment or discharging water will trigger the requirements. Yolo County should not have responsibility of mercury remediation from mining that occurred during the gold rush. State and federal funding will be required to achieve the TMDL goals.

A group of mercury experts has been hired to analyze the calculations in the proposed TMDL. Perhaps less restrictive numeric objectives can achieve the same benefits of protecting wildlife and human health which significantly reducing remediation costs. The County is working with State Assemblywoman Wolk's office regarding funding.

**Response**

The goal of the mercury control program is to reduce sources of mercury and methylmercury to Cache Creek and tributaries in the upper watershed. Control of total mercury will mainly be accomplished by erosion control as mercury binds to and is transported by sediment. The County's projects such as erosion control, bank stabilization, and native plant re-vegetation are not in conflict with the goals to reduce erosion of contaminated sediment if the projects are carefully implemented and monitored for effectiveness. Other activities such as invasive species removal, campground improvements, bridge and road maintenance, and gravel mining will need to follow best management practices to control contaminated sediment. The Basin Plan has existing water quality objectives for suspended material, turbidity, and sediment. The proposed Basin Plan amendment requires projects within mercury-enriched zones to comply with existing requirements for turbidity and erosion.

The Board is aware that the TMDL does not address financing or the issue of who is financially responsible for addressing mercury in the watershed. The Board supports the County's efforts to seek state or federal funding to implement the TMDL. Potential funding sources may be found through offset programs. Mine owners and operators are responsible for mine cleanups.

The proposed numerical objectives, methylmercury concentrations in fish tissue, are based, primarily, on recommendations provided by the US Fish and Wildlife Service. Staff has received the County's written comments (Daryl Slotton, April 2005) regarding the numeric objectives. Staff have evaluated the comments and proposed a fourth water quality objective alternative for the Board to consider. While the final fish tissue target is yet to be determined by the Regional Board, fish are currently significantly above protective levels and concentrations need to be reduced. Fish tissue levels are expected to decline after the mercury control programs are implemented. Staff commit to reviewing the objectives on a periodic basis to determine their applicability. Staff will review the information that the County provides regarding the fish tissue objectives. While the objective and methylmercury goals may be adjusted if warranted, the basic control program for the watershed does not necessarily need to be modified to achieve load reductions. Mercury inputs from the mine sites and watershed areas with elevated levels of mercury need to be significantly reduced, other sources of mercury and methylmercury need to be stabilized, and new sources must be prevented from entering the watershed. If the only focus of the control program is in the upper watershed, the time to achieve objectives will be greater than the estimates provided for Alternative 2 of the staff report.

**Speaker** Max Stevenson, Yolo County Flood Control and Water Conservation District in Woodland (operates Capay Dam in Cache Creek)

**Comment Summary**

Capay Dam is a diversion structure and not a storage facility. There is not much sediment trapped behind this type of structure as compared to a storage dam. Mr. Stevenson has submitted two documents on the Capay Dam.

**Response**

Staff has reviewed Mr. Stevenson's reports on the Capay Dam. Based on the volume calculations and mercury concentrations of sediment stored upstream of the Capay Dam (< 1 kg mercury), staff proposes to remove requirements that the Yolo County Flood Control and Water Conservation District evaluate operations of the dam and removal of sediment. Future regulatory activities or projects that modify dam characteristics or operations may require the operator to evaluate the changes with respect to mercury or methylmercury discharges and propose a plan to be in compliance with the proposed Basin Plan.

**Speaker** Vicki Murphy, Capay Valley

**Comment Summary**

Ms. Murphy is concerned with agricultural impacts of the wild and scenic designation. The placement of protected or endangered fish into Cache Creek will determine the flows

of the water in the creek. Ms. Murphy would not like to see the creation of a fish habitat in this area and would like a fish barrier to keep migrating fish from entering the creek.

**Response**

The Regional Board does not have jurisdiction with respect to the potential wild and scenic designation for Cache Creek. Staff understands that AB1348 has been modified to allow for mercury identification and remediation projects. Staff will review information on the issue of migratory fish in mercury-impaired waters.

**Speaker** Tom Smythe, Lake County Public Works

**Comment Summary**

The report has identified that there is somewhere between 5,000 – 9,000 kg of mercury in bed and banks of Cache Creek between the North Fork Cache Creek and Bear Creek. This stretch is also a large source of methylmercury. Lake County is concerned with the potential impacts of the proposed federal wilderness designation for Cache Creek wildlife area and other state wild/scenic designations in the area. Such a designation might impact the ability to identify and remediate mercury hot spots in the canyon.

**Response**

As noted above, the Regional Board does not have jurisdiction with respect to the potential wild and scenic designation for Cache Creek. Staff understands that AB1348 has been modified to allow for mercury identification and remediation projects.

**Speaker** Vicki Fry, Sacramento Regional County Sanitation District

**Comment Summary**

Ms. Fry has an information request. She was concerned with the science and statistics behind the development of the methylmercury element in the TMDL. Ms. Fry would like ready access to the data sets used by the Regional Board staff. Ms. Fry would like the Regional Board staff to provide access to the methylmercury target data, the waste load allocations, and other pertinent components of the TMDL. If the statistical analysis of the data used in this TMDL were to change after this workshop, SRCSD would like ready access to the new data. They have requested information before and have not received this (unpublished data from UC Davis). Ms. Fry asserts there are fundamental flaws in the statistical approach.

**Response**

Ms. Fry's concerns with the statistical approaches used in the TMDL are unclear. The process to develop a mercury TMDL is iterative. As noted before, the Regional Board will continue to receive and review new information and update the mercury control program as necessary. Control actions, however, must be initiated even if the Regional Board expects new information in the future. The currently available information is sufficient to know that the mercury in Cache Creek watershed must be addressed. All methylmercury data used in the peer review report was included in the Basin Plan staff report. Any new data used in the public review version will be included in the report.

Following the Board Meeting, Ms. Fry clarified that she wanted data and calculations corresponding to a particular set of figures in the Source Analysis chapter of the Cache Creek TMDL report. Staff mailed a CD containing the data, calculations, and figures to Ms. Fry on 7 April 2005.

At the Board Meeting, Chairman Schneider directed Staff to work with Yolo County and Ms. Fry to address other concerns. Ms. Fry and a consultant to the Sanitation District participated in a meeting with Yolo County stakeholders and Regional Board staff on 9 May 2005. The purpose of the meeting was to discuss changes made to the proposed Basin Plan Amendment in response to written and verbal comments and issues remaining to be resolved. Regional Board staff held this meeting prior to publishing the public review version of the draft Basin Plan Amendment and Staff Report.

**Speaker** Jim Eaton, Cache Creek Wild

**Comment Summary**

Cache Creek Wild supports proposals of certain areas of Cache Creek as wild and scenic and supports mercury cleanup in the watershed. The proposed bill by Assemblywoman Wolk would allow mercury cleanup.

**Response**

Staff will continue to follow the progress of AB1348 and provide comments as necessary.

**Speaker** Becky Wood, Environmental Manager for Teichert Materials

**Comment Summary**

Ms. Wood was concerned with the addition of the commercial fishing designation to the Basin Plan, which would result in whole new set of water quality goals and regulations to comply with in addition to mercury goals. Cleanup activities may involve the Army Corps of Engineers and requires 1603 agreements. Ms. Wood indicated that the mining industry has been pursuing Good Samaritan legislation for cleanup of mine wastes.

**Response**

The Basin Plan amendment proposes to add COMM, which is defined in the Basin Plan to include both commercial and sport fishing, as a beneficial use of Cache Creek and tributaries. Although there is no known commercial fishing in Cache Creek, sport fishing is an existing use. The COMM designation is to clarify that COMM, including in this case sport fishing, is an existing use consistent with the Basin Plan. The COMM designation would not encourage commercial fishing. The clarification by adding COMM does not result in the necessity for new or additional water quality objectives.

Projects or contaminated sediment remediation activities in waters of the state may involve other agencies and permitting requirements, such as water quality certifications, Army Corps 404 permits, and DFG streambed alteration agreements.